

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director/(954) 797-1101
Prepared by: Bradley Swing, AICP, Planner II

SUBJECT: Plat, P 12-1-01 McDonough Property, 4300 SW 59 Avenue/Generally located north of SW 43 Street, east of SW 59 Avenue.

AFFECTED DISTRICT: District 1

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING THE PLAT KNOWN AS MCDONOUGH PROPERTY AND AUTHORIZING THE MAYOR AND TOWN CLERK TO ACKNOWLEDGE THE APPROVAL BY AFFIXING THE MAYOR'S SIGNATURE AND THE TOWN SEAL TO SAID PLAT; AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: The applicant requests approval of the resolution for the proposed plat to be known as the McDonough Property. The subject site consists of 2.6985 acres (117,547 square feet) for the proposed development of 10,400 square feet of office use along with an existing 20,000 square feet of manufacturing use. Access to the site is provided on SW 59 Avenue. A non-vehicular access line (NVAL) is provided along the east limit of the plat and along the east 75 feet of the north limit of the plat. A 10 foot utility easement is provided on the south limit of the plat and along SW 59 Avenue. Staff finds that the proposed plat is consistent with the Comprehensive Plan and Land Development Code as it relates to location, and size.

PREVIOUS ACTIONS: This item was tabled from the January 21, 2004 Town Council Meeting to the February 4, 2004 Town Council meeting at the request of the applicant.

CONCURRENCES: At the December 10, 2003, Planning and Zoning Board meeting, Mr. McLaughlin made a motion, seconded by Vice-Chair Turin, to approve without the 25-foot dedication. (Motion carried 5-0).

FISCAL IMPACT: N/A

RECOMMENDATION(S): Staff finds the subject application complete and suitable for transmittal to Town Council for further consideration. In addition, the following conditions shall be met:

1. Sufficient capacity of the regional road network, as determined by Broward County. In the event that sufficient capacity is not met, the plat shall be deemed denied by the Town of Davie.
2. Provide the Planning and Zoning Division a Mylar copy of the plat upon recordation.
3. Provide 25 feet of right-of-way along SW 58 Avenue.

Attachment(s): Resolution, Planning Report, Plat, Future Land Use Plan Map, Zoning and Aerial Map

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING THE PLAT KNOWN AS MCDONOUGH PROPERTY AND AUTHORIZING THE MAYOR AND TOWN CLERK TO ACKNOWLEDGE THE APPROVAL BY AFFIXING THE MAYOR'S SIGNATURE AND THE TOWN SEAL TO SAID PLAT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the proposed plat to be known as McDonough Property was considered by the Town of Davie Planning and Zoning Board on December 10, 2003;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The plat known as McDonough Property is hereby approved subject to the conditions stated on the planning report which is attached hereto as Exhibit "A" and made a part hereof.

SECTION 2. The Mayor is authorized to sign said plat on behalf of the Town and the Town Clerk is directed to affix the Town seal to said plat.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2004.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2004.

TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation



Applicant Information

Owner:

Name: Francis McDonough
Address: 4300 SW 59 Avenue,
City: Davie, FL 33314
Phone: (954) 583-8353

Agent/Council:

Name: A.J. Hydro Engineering, Inc.
Address: 5932 NW 73 Court
City: Parkland, FL 33067
Phone: (954) 344-7866

Background Information

Application History: This item was tabled from the January 21, 2004 Town Council Meeting to the February 4, 2004 Town Council meeting at the request of the applicant.

Planning and Zoning Board Recommendation: At the December 10, 2003, Planning and Zoning Board meeting, Mr. McLaughlin made a motion, seconded by Vice-Chair Turin, to approve without the 25-foot dedication. (Motion carried 5-0).

Application Request: Approval of the McDonough Property plat.

Affected District: District 1

Address/Location: 4300 SW 59 Avenue/Generally located north of SW 43 Street, east of SW 59 Avenue.

Future Land Use Plan Designation: Regional Activity Center

Existing Use: Metal Fabrication

Existing Zoning: M-2, Medium Industrial District

Proposed Use: 20,000 square feet of manufacturing and 10,400 square feet of office.

Parcel Size: 2.6985 acres (117,547 square feet)

Surrounding Existing Use:

North: Lakeside Villas Apartments
South: Davie United Warehouses
East: Auto Salvage, Vacant Land
West: Warehouses

Surrounding Future Land Use Plan Map Designation:

Regional Activity Center
Regional Activity Center
Regional Activity Center
Regional Activity Center

Surrounding Zoning:

North: M-2, Medium Industrial District

South: M-2, Medium Industrial District

East: M-1, Light Industrial District/M-2, Medium Industrial District

West: M-1, Light Industrial District/R-5, Low Medium Density Dwelling

Zoning History

Related Zoning History: None

Previous Requests on Same Property: A Site Plan (SP 7-1-86) for Eagle Metal Fabricators, Inc. was approved by Town Council on March 18, 1987.

Applicable Codes and Ordinances

Article XII of the Land Development Code, Subdivisions and Site Plans.

§12-24(J)(8) of the Land Development Code, Medium Industrial (M-2) District. The M-2 District is intended to implement the industrial classification of the Town of Davie Comprehensive Plan by providing for medium industrial uses which, by their inherent nature or by virtue of the materials used, processes utilized or products produced, may involve some characteristics objectionable to or incompatible with residential areas. Hence, M-2 districts are not intended for locations abutting residential property.

§12-33(O)(6) of the Land Development Code, General Regulations. *Fences, Walls and Hedges:* All yards used for storage within industrial use areas shall be enclosed with a continuous wall of masonry eight (8) feet high to screen the contents of such yard from the view of the surrounding property.

§12-33(X) of the Land Development Code, General Regulations. *Outdoor Activities Restricted.* (1) All activities of permitted uses, including but not limited to sale, display, preparation and storage, shall be conducted within a completely enclosed building except as follows: a. Automobile parking lots, including display and parking lots associated with permitted automobile, truck, recreational vehicle and/or boat dealerships.

§12-34(Q)(6) of the Land Development Code, Detailed Use Regulations. *Industrial Activities:* In the M-1, M-2, and M-3 districts the following uses are permitted: (1) Educational, scientific, industrial research, office and business uses providing a minimum of five thousand (5,000) square feet of net building area.

§12-37 of the Land Development Code, Nonconforming uses of land. (A) The lawful use of land existing at the time of the passage of these regulations, although such use does not conform to the provisions hereof, may be continued, subject to the following provisions: (1) No such nonconforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of the adoption

of these regulations unless such use is changed to a use permitted in the district in which such use is located.

§12-40 of the Land Development Code, Nonconforming uses of buildings, structures and premises. If a lawful use involving individual structures, buildings and/or premises in combination exists at the effective date of adoption of or amendment to these regulations that would not be allowed in the district in which it is located under the terms of these regulations, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions: (3) Any structure or building, or structure or building and premises in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed.

§12-83 of the Land Development Code, Conventional Nonresidential Development Standards, M-2, Medium Industrial District requires the following minimums: lot area of 35,000 square feet, 100' frontage, 25' setbacks from all street lines; fifty (50) feet from property lines adjacent to areas zoned, occupied or Land Use Plan designated residential; ten (10) feet from property lines adjacent to areas zoned, occupied or Land Use Plan designated for nonresidential uses; one hundred twenty-five (125) feet from all property lines for the manufacture, storage or processing of concrete, cement and lime, and for heavy manufacturing, fabrication and industrial uses, excluding yacht manufacturing and repair, 20% open space, and the following maximums: height 35', 40% building coverage.

§12-208(A)(14) of the Land Development Code, Requirements for off-street parking. *Manufacturing, wholesale warehousing, distribution centers, and industrial uses.* One (1) space for each six hundred (600) square feet of floor area of the building plus one (1) space for each three hundred (300) square feet of office use.

§12-503 of the Land Development Code, Definitions, *Fabrication and Assembly*: The production and distribution, from standardized parts, involving a physical, as opposed to chemical, mating or joining of the individual parts to produce a distinct object. Fabrication, as herein defined, does not include manufacturing operations from raw materials.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 8. This Planning Area is the heart of Davie and is the most diverse, characterized by older, small-scale commercial development, older single-family residential neighborhoods, and newer, large-scale multi-family residential developments that serve the rapidly growing South Florida Education Center (SFEC). It is bounded on the north by Nova Drive, south by Orange Drive, east by Florida's Turnpike, and west by University Drive. The planning area encompasses the downtown Davie Business District, where western theme

architecture is required, the Davie Town Hall and Rodeo Arena, two large mobile home communities, and industrial land.

Flexibility Zone: The subject site falls within Flexibility Zone 98.

Broward County Land Use Plan: The subject site is located within the Regional Activity Center.

Applicable Goals, Objectives & Policies: *Future Land Use Plan, Objective 5: Consistency of Development with Comprehensive Plan, Policy 5-2:* The (re)zoning, (re)planning, and site planning of land shall be in compliance with the density ranges shown on the Davie Future Land Use Plan map and the applicable Future Land Use Designation provisions as contained in the Permitted Use portion of the Implementation Section.

Future Land Use Plan, Objective 10: Regional Activity Center Use, Policy 10-2: The Regional Activity Center land use designation shall promote and encourage large-scale development and redevelopment as well as small parcel infill development and redevelopment that facilitates a coordinated and balanced mix of land uses.

Future Land Use Plan, Objective 10: Regional Activity Center Use, Policy 10-8: Compatibility of land uses within the RAC shall be supported by local land development regulations and plans to address the impacts of new development on existing land uses and residents, and by plans to improve community facilities and services.

Future Land Use Plan, Objective 17: Land Use Compatibility and Community Appearance, Policy 17-1: Lands designated for non-residential use shall be located in a manner which facilitates development, but does not adversely impact existing and designated residential areas.

Policy 17-5: Land development regulations shall provide for the eventual phasing out of non-conforming uses.

Significant Development Review Agency Comments

Engineering: The applicant shall provide a 25-foot right-of-way dedication along SW 58 Avenue.

Application Details and Staff Analysis

The applicant's submission indicates the following:

1. *Site:* The site area consists of approximately 2.6985 acres (117,547 square feet).
2. *Restrictive Note:* The proposed plat is restricted to 10,400 square feet of office use and 20,000 square feet of industrial use.

3. *Access:* The plat provides for one (1) access opening located on SW 59 Avenue. A non-vehicular access line is provided along the east limit of the plat and along the east 75 feet of the north limit of the plat.

4. *Easements:* A 10 foot utility easement is provided on the south limit of the plat and along SW 59 Avenue.

5. *Right-of-Way Dedication:* The issue of dedicating a 25-foot right-of-way along the entire SW 58 Avenue property boundary has been raised and discussed with the applicant. The Town's position is that the proposed additional right-of-way would improve the neighborhood infrastructure, while the applicant disagrees on the basis of rough proportionality as stated in the attached letter. (see Exhibits 4 & 5).

The existing buildings on the site include 19,849 square feet of manufacturing use and 1,605 square feet of office use. The property owner is not expanding the manufacturing use. The owner plans to remove the existing modular office building and construct an office building with up to 10,400 square feet of office floor area.

The existing Eagle Metal Fabrications building is a non-conforming structure; the building is not completely enclosed as required by §12-33(X) of the Land Development Code.

The site is non-conforming with the following sections of the Land Development Code: §12-33 (O)(6) requires that all yards used for storage within industrial use areas shall be enclosed with a continuous wall of masonry eight (8) feet high to screen the contents of such yard from the view of the surrounding property and §12-34(Q) requires that office buildings in the M-2 district provide a minimum of 5,000 square feet of net building area.

Findings of Fact

The proposed plat is consistent with the Comprehensive Plan and Land Development Code as it relates to access, use, location and size.

Staff Recommendation

Staff finds the subject application complete and suitable for transmittal to the Planning and Zoning Board and Town Council for further consideration. In addition, the following conditions must be met prior to final approval:

1. Approval shall be subject to sufficient capacity of the regional road network as determined by Broward County. In the event sufficient capacity is not met, the plat shall be deemed denied by the Town of Davie.
2. A mylar copy of the plat shall be provided to the Planning and Zoning Division upon recordation.
3. Provide 25 feet of right-of-way along SW 58 Avenue.

Planning and Zoning Board Recommendation

At the December 10, 2003, Planning and Zoning Board meeting, Mr. McLaughlin made a motion, seconded by Vice-Chair Turin, to approve without the 25-foot dedication. (Motion carried 5-0).

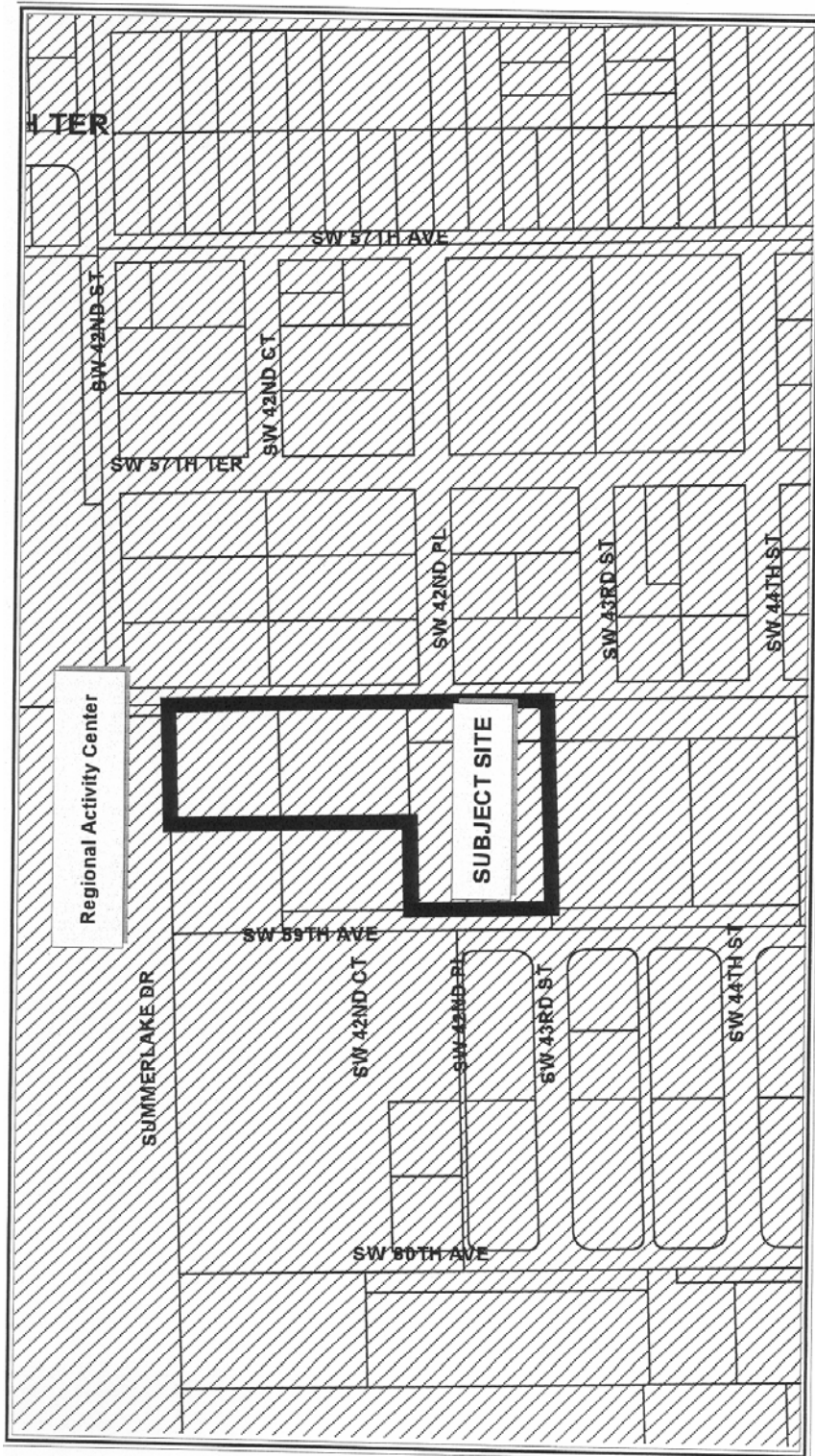
Town Council Action

Exhibits

1. Plat
2. Future Land Use Map
3. Subject Site, Zoning and Aerial Map
4. Engineering Comments
5. Letter from Richard G. Coker, JR.

Prepared by: _____

Reviewed by: _____

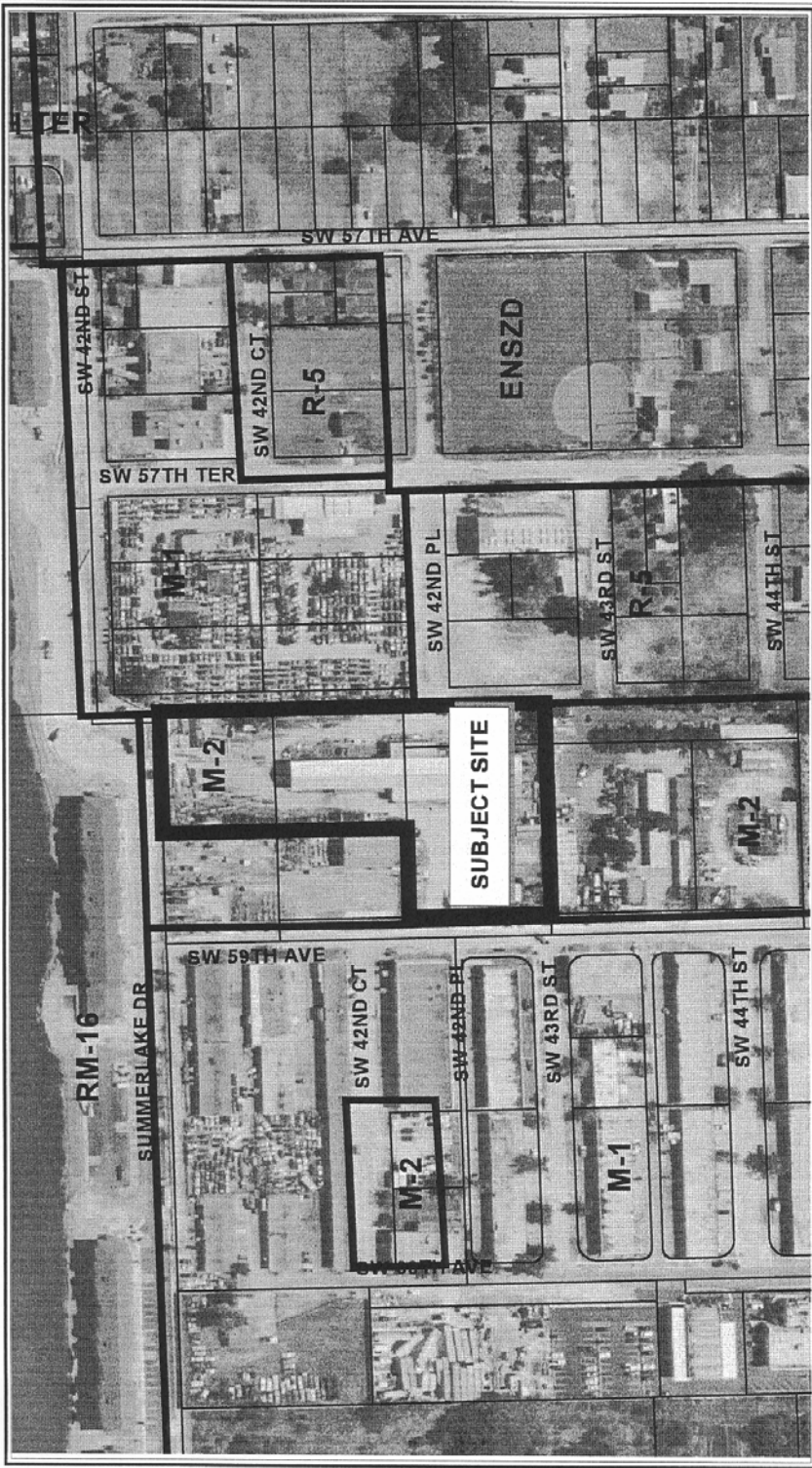


PLAT
P 12-1-01
Future Land Use Map

Prepared By: BS
Date Prepared: 7/30/03

Date Flown:
12/31/00

Planning & Zoning Division - GIS



Date Flown:
12/31/00



200 0 200 400 Feet

Planning & Zoning Division - GIS

PLAT **P 12-1-01** **Zoning and Aerial Map**

Prepared By: BS
Date Prepared: 7/30/03



ENGINEERING DIVISION

DEVELOPMENT SERVICES DEPARTMENT

6591 Orange Drive, Davie, Florida 33314

(954) 797-1113

DEVELOPMENT REVIEW COMMENTS

PROJECT:	McDonough Property
TOWN'S PROJECT NO:	P-12-1-01
REVIEW TYPE:	Plat
SUBMITTAL NO:	2
SUBMITTAL DATE:	August 2, 2003
PREV SUB'MTL DATES:	December, 2001 / Comments 1/7/02; 4/7/03
ENG. REVIEWER:	Haumann
ENG. REVIEW DATE:	December 2, 2003
DATE TO P&Z	December 2, 2003

<u> X </u>	Plan is <u>RELEASED</u> for further processing subject to the comments noted below.
<u> </u>	Plan is <u>NOT RELEASED</u> for further processing subject to the comments noted below.

COMMENTS

1. As previously noted in the Engineering review comments dated April 7, 2003, and as subsequently confirmed by the Police and Fire Departments, the Town still requires the dedication of a 25-foot right-of-way (ROW) along the entire SW 58th Ave property boundary (0.3 acres).
 - a. The 25-foot ROW requirement, in conjunction with the existing 25-foot ROW on the adjoining parcels is part of a long-term effort to improve access to and around the light industrial area within which this plat resides. Public health and safety in this area is currently compromised by the limited access to police and fire department vehicles posed by lack of roadways and through streets, currently inadequate roadway widths, and lack of sufficient ROW along corridors where roadway improvements might be implemented. Similarly any renewal of this area for commercial or light industrial redevelopment will require ROW acquisition and roadway improvements to safely accommodate larger commercial vehicles

Law Offices
COKER & FEINER
1404 South Andrews Avenue
Fort Lauderdale, FL 33316-1840

Telephone: (954) 761-3636
Facsimile: (954) 761-1818

Richard G. Coker, Jr., P.A.
Rod A. Feiner

Via Facsimile Transmission (954) 797-1204

August 27, 2003

Deborah Ross, AICP
Planner III
Development Services Department
6591 Orange Drive
Davie, FL 33314

Re: McDonough Property Plat

Dear Debbie:

This is a follow up to our meeting this morning regarding the McDonough Property Plat. The issue discussed with the City Engineer was the dedication of an additional 25 feet of right of way for S.W. 58th Ave. As you know, 15 feet of right of way exists for this road, however, it is currently unpaved and unused for right of way purposes. The City Engineer indicated that the Town would be reviewing the roadway situation in the next year to determine what the ultimate needs would be for the area. Since the McDonough Plat is requesting plat approval now, the City Engineer wants the right of way dedication in case the Town determines that a roadway would ultimately be needed to be constructed.

We explained to you that a 25 foot right of way dedication would cause a substantial hardship to the property owner. The area where the right of way is being requested is being used by Mr. McDonough's current business. If the property was larger and the right of way dedication did not have such an impact on the use of the property, the Town's desire to plan for the possible future need for the roadway could be accommodated. Under the current situation, however, the property owner cannot agree to dedicate the right of way for a roadway for which there are no plans to use in the future. Further, as you know, there is no access planned from the McDonough Property Plat to S.W. 58th Avenue and accordingly there will no impact on this right of way.

Rough Proportionality and Rational Basis Test

Many municipal codes and the Broward County Trafficways plan require dedications of rights of way as a condition of development approvals when the property is adjacent to an existing proposed right of way.

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This requirement, however, is subject to the constitutional limitations of the Fifth Amendment to the United States Constitution as articulated by the Federal and State Courts. The clearly established law on required dedications is that there must be a reasonable connection shown by the agency requiring the dedication between the type and scope of the dedication and the impacts of the proposed development. In this case, the Town would have to provide an analysis that the ADDITIONAL vehicle trips generated by the proposed development would necessitate the improvement of the roadway in the very near future and that improvement would require the right of way dedication. In this case, that finding cannot be made because (1) there are no plans to immediately widen or make any improvements to S.W. 58th Avenue in order to require an additional twenty-five (25) foot dedication, and (2) the impact of the proposed plat uses would not result in the need for any improvements.

For many years the constitutional test for forced dedications was the "rational nexus" test. This test was articulated by the Second District of Appeals in Lee County v. New Testament Baptist Church of Fort Myers, Florida, Inc., 507 So.2d 626 (Fla. 2nd DCA 1987) as follows:

In short, for the nexus test to apply, thus making a compulsory dedication constitutionally valid, the nexus must be rational. This means it must be substantial, demonstrably clear and present. It must definitely appear that the proposed action by the developer will either forthwith or in the demonstrably immediate future so burden the abutting, through increased traffic or otherwise, as to require its accelerated improvement. Such dedication must be for specific and presently contemplated immediate improvements - not for the purpose of "banking" the land for use in a projected but unscheduled possible future use.¹

The constitutional test is now called the "rough proportionality" test, but the basics of the test are the same.² For a forced dedication to be valid the agency must make an individualized determination that there exists a "rough proportionality" between the dedication and the nature and extent of the impact of the proposed development.³

¹ The Second District was adopting the language of the New Jersey Supreme Court in 181, Inc. v. Salem County Planning Board, 333 A.2d 501 (Supre. Ct. Law Div.1975)

² See, Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309 (1994)

³ See, Sarasota County v. Taylor Woodrow Homes Limited, 652 So.2d 1246 (Fla. 2nd DCA 1995); State of Florida Department of Transportation v. Heskman, 644 So.2d 527 (Fla. 4th DCA, 1994)

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Based on this analysis I hope that the Town will agree that the requirement for the dedication of an additional 25 feet for S.W. 58 Avenue is not appropriate or warranted. In any case, please place this matter on the next available Planning and Zoning Board agenda.

Thank you for your attention to this matter.

Very truly yours,



RICHARD G. COKER, JR.

For the Firm

cc: Fran McDonough (954) 583-0025
Sam Engel (954) 791-4811
Howard Jablon (954) 344-7866

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